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California Penal Code Section 1205---------- 3,11

their Brief in Opposition to Petition for Certiorari.

QUESTION PRESENTED

I.

When a party appearing propria persona, in the immediate presence of the Court during the course of a judicial proceeding is disorderly, disobedient and contemptuous toward the judge and interrupts the due course of the proceeding, may the judge summarily punish such party for various acts of contempt as they occur without notice of hearing?

II.

When a party appearing propria persona attempts to operate a recording device during the course of a judicial proceeding in a State Court, may the court prohibit such use of the recording device by such party?

STATUTES INVOLVED

Statutes of the State of California listed in the petition provide in their pertinent parts:

California Code of Civil Procedure, Section 178:

> "For the effectual exercise of the powers conferred by the last section, a judicial officer may punish for contempt in the cases provided in this code."

California Penal Code, Section 1205:

> "A judgment that the defendant pay a fine, with or without other punishment, may also direct that he be imprisoned until the fine is satisfied and may further direct that such imprisonment begin at and continue after the expiration of any imprisonment imposed as a part of the punishment or of any other imprisonment to which he may theretofore have been sentenced. Every such judgment (1) shall specify the extent of the imprisonment for nonpayment of the fine, which (2) shall not be more than one day for each (3) twenty dollars ($20) of the fine, nor exceed in any case the term for which the defendant might be

> sentenced to imprisonment for the offense of which he has been convicted. . . . The provisions of this section shall apply to any violation of any of the codes or statutes of the State of California punishable by a fine or by a fine and imprisonment."

Statutes of the State of California not listed in the petition but involved in this case are and provide in their pertinent parts:

California Code of Civil Procedure, Section 177:

> "Every judicial officer shall have power:
>
> 1. To preserve and enforce order in his immediate presence, and in proceedings before him, when he is engaged in the performance of official duty;
>
> 2. To compel obedience to his lawful orders as provided in this code;
>
> . . ."

California Code of Civil Procedure, Section 1209:

> "The following acts or omissions in respect to a court of justice,

or proceedings therein, are contempts of the authority of the court:

1. Disorderly, contemptuous, or insolent behavior toward the judge while holding the court, tending to interrupt the due course of a trial or other judicial proceeding;

2. A breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the due course of a trial or other judicial proceeding;

. . .

5. Disobedience of any lawful judgment, order, or process of the court;

. . .

8. Any other unlawful interference with the process or proceedings of a court;

. . ."

STATEMENT

On May 6, 1974, petitioner was summarily punished on three separate occasions for direct contempt of Court during a Law and Motion proceeding.

After each occurance the Judge acted instantly, holding petitioner in contempt and immediately imposing the punishment therefor.

The first assignment and adjudication of contempt was imposed after petitioner made persistent attempts to argue points not in issue after the court ordered her not to do so; petitioner refused to comply with the order; petitioner's conduct was disorderly, disobedient and contemptuous, and interrupted the due course of the proceeding; and petitioner's conduct was the product of advertent contumacy toward the court.

The second assignment and adjudication of contempt was imposed after petitioner operated a recording device during the proceeding before the court in disobedience to an order of the court

not to operate such a device.

The third assignment and adjudication of contempt was imposted after petitioner in a loud and contentious tone of voice made statements in the courtroom impugning and showing disrespect to the judge in the presence of a large crowd of attorneys and litigants after the court ordered petitioner to terminate further arguments and to remove herself from the courtroom; such remarks included a derogatory statement that the court was an insurance lawyer, that the court represented certain named insurance companies; petitioner's conduct was disorderly, disobedient, insolent and contemptuous, and interrupted the proceedings of the court.

Petitioner was fined $500.00 on the first assignment and adjudication; $200.00

on the second assignment and adjudication and $500.00 on the third assignment and adjudication (A.D. of the Petition).

No transcript of the judicial proceeding exists; no party to the action requested the presence of a court reporter. The Court of Appeal of the State of California, Third Appellate District, after issuing a Temporary Stay Order, vacated said Order and denied petitioner's Writs of Mandate, Prohibition and Certiorari without opinion (A.B-1, B-2 of the Petition); the Supreme Court for the State of California denied petitioner a hearing without opinion (A.A. of the Petition).

ARGUMENT

Due Process Does Not Guarantee Petitioner A Right To Notice And Hearing Before Another Judge, Since After Each Act

Of Contempt Occurred The Judge Acted Instantly In Holding And Punishing Petitioner For Contempt And Punishment Imposed For Each Act Of Contempt Did Not Exceed A Sentence Of Six Months.

The inherent power of the court to immediately punish summarily for contempt committed in its presence during a judicial proceeding when instant action is necessary to preserve order and maintain the court authority is an anciently recognized and recently reaffirmed power.

Codispoti v. Pennsylvania, __U.S.__, 41 L.Ed 2d 912, 94 S. Ct __ (1974);

Taylor v. Hayes, __U.S.__, 41 L.Ed 2d 897, 94 S. Ct. __ (1974);

Ex Parte Terry, 128 U.S. 289, 32 L. Ed 405, 9 S. Ct 77 (1888).

This inherent power of immediate summary punishment was properly invoked by the court in this action. The justification of necessity is supported by

the facts. The petitioner was disorderly, contemptuous and insolent towards the judge. She persisted to argue points not relevant to her motion after the judge ordered her to stop. She surreptitiously operated a recording device in the courtroom in definace of an order from the presiding judge not to do so without prior permission from the judge; petitioner's voice was loud and contentious as she impugned the integrity of the judge and defied his authority making an orderly and speedy dispatch of the case and proceeding impossible. Necessity dictated instant action for the preservation of order and maintenance of the court's authority.

The Court of Appeal reviewed the conduct of petitioner and the power of the court to summarily punish for contempt; the facts recited in the order

constituting the contempt are presumed to be true.

Ex Parte Terry, 128 U.S. 289, 32 L.Ed 405, 9 S. Ct 77 (1888);

See, Fisher v. Pace, 336 U.S. 156, 93 L.Ed 569 __S. Ct__ (1949).

The contempt constitutes a petty contempt; trial by jury is not required.

Codispoti v. Pennsylvania, __U.S.__, 41 L. Ed 2d 912, 94 S. Ct__ (1974).

Assuming arguendo, the provisions of Penal Code Section 1205 would be an appropriate indication of a maximum sentence set by punishment by fine without the alternative of imprisonment; the maximum sentence would not exceed 60 days (one day for each $20.00 of the fine).

Due Process Does Not Guarantee Petitioner The Right To Operate A Recording Device During A Judicial Proceeding, Since The Regulation Of Such Devices

By The Court Does Not Offend Fundamental Principles Of Justice.

Petitioner attacks the order adjucicating contempt on the grounds that she operated the device in the exercise of her constitutional rights. Petitioner cites, In Re Hagen, 224 C.A.2d 590, 35 Cal. Rptr. 828 (1964) in support of her contentions.

Hagen does not support petitioner's position. It merely holds that a party cannot be held in contempt for operating a recording device in the absence of a rule or order prohibiting such use. The case did not involve either a specific rule or an order purporting to control recording devices, and in this regard, it is distinguishable from the facts in this case.

Respondent can find no cases relative to the power of the court to

regulate or prohibit the use by parties or their counsel of recording devices; however, since the risk of abuse, interruption and interference with judicial proceedings is great as shown by the quality of the alleged transcript attached to the petition, it only follows that such regulation falls within the inherent power of the court to exercise a reasonable control over all proceedings connected with the litigation before it, so that there may be the orderly administration of justice.

Snyder v. Massachusetts, 291 U.S. 103, 78 L.Ed 674, 54 S. Ct 330, 90 ALR 575 (1934)

California Code of Civil Procedure, Section 177.

CONCLUSION

A Federal Question not herebefore determined by this Court has not been determined by the State Court, and the

determinations of the State Court are in accord with applicable decisions of this Court. The Petition for Certiorari should be denied.

Respectfully submitted,

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October 11, 1974.

CERTIFICATE OF MAILING

I certify or declare under penalty of perjury as provided by C.C.P. 2015.5 that on October 11, 1974, I served the Brief in Opposition to Petition for Certiorari on the persons listed below by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in a United States Post Office mail box at Redding, California, addressed as follows:

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